

STATE OF MINNESOTA
IN SUPREME COURT
C6-90-649

Interactive Audio-Video Communications
Experiment in Fourth Judicial
District - Mental Health Division
Price and Jarvis Proceedings

ORDER

WHEREAS, the Department of Human Services (DHS), the Attorney General of the State of Minnesota, the presiding judge of the Mental Health Division of the Fourth Judicial District, the Fourth Judicial District Court Administration, the Hennepin County Commitment Defense Panel, the Ebenezer Society that provides guardians ad litem for *Jarvis* and *Price* hearings, and the Hennepin County Attorney have agreed to participate in, on an experimental basis, the use of interactive audio-video communications in the Mental Health Division of the Fourth Judicial District for receiving the testimony of petitioner's physicians in proceedings pursuant to *Jarvis v. Levine*, 418 N.W.2d 139 (Min. 1988); and *Price v. Sheppard*, 307 Minn. 250, 239 N.W.2d 905 (Minn. 1976); and,

WHEREAS, the Department of Human Services has received approval to use funds from the InterTechnologies Group (InterTech) of the Minnesota Department of Administration to conduct research in the use of interactive audio-video communications to more efficiently conduct DHS business on condition that the funds be encumbered by June 30, 1990; and,

WHEREAS, DHS has agreed to assume all costs associated with the installation and operation of interactive audio-video communication equipment and a transmission

path for the purposes authorized by this order; and

WHEREAS, it may be useful to investigate alternative hearing methods to carry out the mandates of *Price v. Sheppard* and *Jarvis v. Levine*,

NOW, THEREFORE, IT IS ORDERED:

1. The Mental Health Division of the Fourth Judicial District is authorized to conduct an experimental program for ninety days in Courtroom 356 using interactive audio-video communications to receive the testimony of physicians who will be physically located at the Anoka-Metro Regional Treatment Center (AMRTC), Anoka, Minnesota.

2. The use of interactive audio-video communications in this experiment is excepted from the provisions of Canon 3A(7) of the Minnesota Code of Judicial Conduct.

IT IS FURTHER ORDERED that the following guidelines will apply to this experimental program:

1. Transmission: The experiment will consist of interactive audio-video communication between only two sites, Courtroom 356 at the Hennepin County Government Center and one secured witness room at AMRTC. The transmission will be either point to point microwave or digital compressed video via land line. The transmission path will be secured against electronic eaves-dropping.

2. Equipment in the Courtroom: There will be four small desktop audio-video terminals in the courtroom. Each terminal will have a built-in television monitor, camera, microphone, and audio speaker. The terminals will be used to communicate with the physician at AMRTC. A separate terminal will be provided for the judge or referee, the respondent's attorney, the petitioner's attorney, and the witness stand in the courtroom. The physician at AMRTC will testify using the same type of audio-video terminal which will be located in the secured witness room.

Two separate television monitors will also be located in the courtroom. One will be for the court reporter. A second television monitor will be located in the courtroom so that all other participants and spectators will be able to observe the testimony of the petitioner's physician.

A separate telephone will be provided in the courtroom to assure a back-up communication path between the courtroom and the witness room at AMRTC. A separate telephone will also be provided in the witness room at AMRTC for the same purpose.

One facsimile machine will be provided in the courtroom and one at the AMRTC witness room for document transmittal during the hearing.

There will be no audio or video recording equipment attached to any part of this communication system.

3. Record: The experiment consists of audio-video transmission only and will not affect the official record of the court proceedings. The court proceedings will be recorded by the court reporter in the customary manner.

4. Medical Records: The original medical records shall be brought to the hearing and copies shall be provided to the physicians.

5. Operation of the Equipment: All equipment will be tested to assure proper functioning prior to each court hearing by suitably trained DHS personnel or Fourth Judicial District Mental Health Division Staff. The test will also consist of establishing audio-visual communication between the courtroom and the AMRTC witness room prior to the scheduled time of a hearing. The tests should be done at least fifteen minutes prior to the hearing time.

6. Court Hearing:

(a) The court or the court administrator shall, upon the scheduling of a hearing, provide each attorney and guardian ad litem who may appear in the court a copy of this order, so as to protect the right of respondent to object under paragraph (f) below.

(b) At the commencement of proceedings, the judge or referee will ensure that contact is made with the physician at AMRTC and that the physician is promptly and properly administered an oath. There shall be no person other than the physician in the witness room during the physician's testimony.

(c) The audio-video communication link with the AMRTC witness room will be maintained from the swearing in of the AMRTC physician until the conclusion of the hearing, or termination of the communication link by the judge or referee.

(d) The equipment will allow the physician at AMRTC to hear objections made to testimony. However, in the event the physician at AMRTC speaks or continues to speak after an objection is made, the judge or referee will be able to interrupt the testimony of that physician without terminating the communication link.

(e) To protect the attorney-client privilege and the effective right to counsel there will be no audio transmission of the conferences which occur in court between attorneys and their clients, between opposing counsel, or between counsel and the trial judge at the bench.

(f) A respondent may object to the use of audio-video communication for receiving the testimony of the petitioner's physician during the ninety-

day experiment. The objection must be made at least five days, excluding weekends or holidays, prior to the scheduled hearing. Argument on respondent's motion may be held by telephone conference call. The court may grant respondent's motion upon showing that the use of audio-video communication for receiving the testimony of the petitioner's physician will hinder ascertainment of the truth or result in unfair prejudice to respondent. The court must notify all parties of its ruling 72 hours prior to the time of the scheduled hearing.

(g) This order does not prohibit conducting *Jarvis* and *Price* hearings in the traditional manner during the ninety-day experiment when all parties stipulate that it is in the best interests of justice to do so.

(h) A person from DHS shall attend all hearings covered by the experiment and keep a log to provide a record of observations, occurrences, participant comments, and problems that arise as a result of this experiment.

7. Training: DHS will train judges, referees, physicians, court personnel, respondents' attorneys, guardians ad litem, and petitioner's attorneys in the proper use of the audio-video terminals.

8. Security: The audio-video communication system will be designed so that the establishment of communications with the AMRTC witness room can only be initiated from Courtroom 356 at the Hennepin County Government Center. It will not be possible to access Courtroom 356 from any other site.

9. Evaluation: The Supreme Court shall appoint an Evaluation Committee consisting of the following membership: A Fourth Judicial District Court Judge, a representative of the Minnesota Department of Human Services, a representative of the

Hennepin County Attorney, a representative of the Minnesota Attorney General, three representatives of the Hennepin County Commitment Defense Panel who shall be nominated by the Panel, and a representative of the Ebenezer Society. The Supreme Court Administrator shall serve as liaison to the Committee. The three representatives of the Commitment Defense Panel may bill for the time served on the Evaluation Committee, subject to the approval of the judge, and such funds shall be paid by the DHS.

The Evaluation Committee shall address the quality of transmission, ease of use of the equipment, reliability of the equipment and transmission path, any disruptions to the proceedings, the ability to assess physician demeanor, and shall particularly address whether there is prejudice to any party as a result of the procedures used in this experiment.

The Evaluation Committee shall file with the Supreme Court a final report evaluating this experiment six months after the date of this Order.

DATED: March 22, 1990

BY THE COURT


Peter S. Popovich
Chief Justice

**OFFICE OF
APPELLATE COURTS**

MAR 22 1990

FILED